FILED

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IN THE

SUPREME COURT OF THE UNITED

STATES

Petition docket#_____ September 2003

WILLIAM SMITH, pro. se.

Petitioner

v.

BANK OF AMERICA, MORTGAGE F.S.B

Respondent

On the petition for Writ of Certiorari
To The COURT OF SPECIAL APPEALS MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(A) The courts of Maryland did error, in lack of reviewing the complete evidence from the record. The court knew, should have known, the two cases evidence in the record in review rest/ lie within the law, and clear evidence of fact as to both respondent bank and agent filing an affirmative defense, which assume all of the cases evidence, Burden of Proof, and risk, on constitutional law! On any failed affirmation defense on merits, the case is resolved in the petitioners favor. by law

(B) The Maryland Courts of last results, for the petitioners protection of Maryland State rights, on this defective judgment The court did not acknowledge the petitioners state constitutional, and federal constitutional rights. The courts did abandon the constitutional process. The courts would not acknowledge the Supreme Courts excepted waiver as evidence of (Extrinsic Fraud) to case CAE -97-16794 by admission waiver by the agent #1 Freidman. The Maryland Court decision to sustain the Circuit Courts action, on this case is in conflict with the constitutional process, both state, and federal, on evidence of an affirmative defense which admission IS CONFIRMED IN JUSTICE bv tainted, fraud foreclosure harmful evidence, from case CAE 97-16794 confirm evidence (Appendix waiver of admission.

(C) The petitioner is not barred by any collaterally estoppels, from any court emotional err, from raising a defense, on the Bank/ Respondent using the agent #1 legal waiver of it's fraud harmful evidence, and the law, fact, evidence, authority of this legal, compelling, evidence of waiver, as it impact the original, actually, illegally litigated, as omission good evidence, case CAE 97-16794 prior Supreme Court case 01-1391 action, as refuted evidence, which the bank/ respondent file clearly raised, as legal affirmative, res judicata defense evidence, action of which the court did truly err. (Intrinsic Fraud) Case Cal 99-15740, The petitioner is clearly requesting a (2) fold case CAE 97-16794 and case CAL 99-15740 evidence review, the

evidence in question, is primary evidence of both case respondents admission, by affirmative defenses, which constitute facts sufficient to warrant to each case respondent as evidence for all court to a finding of each case respondent as guilty as charged-

(1) The Bank/ Respondent's case CAL 99-15740 (Intrinsic Fraud), and the bank's agent #1 Freidman respondent's case CAE 97-16794 (Extrinsic Fraud) did clearly abuse the legal system and judicial process peoples trust of fiduciary duty, with full knowledge , motive, intent, of affirmative ability to administration justice, by their act of fraud to intimation control the constitutional process. ON THIS INJUSTICE-

"Question" can a/ any constitutional court in error with knowledge of the error break the law, to enforce the law, of It's error. Can the court by this error, punish a defendant or (Pro Se) petitioner, because the petitioner in it's defense raised the question, by telling the courts the truth of facts, evidence, events, judgment, of the courts injustice on it's emotional justice. The court's emotional judgment is clearly being used to sustain the respondent's bad faith. The law is clear, no other authority can break the law, and with knowledge enforce the error-All a double standard as Law fraud foreclosure, this evidence cannot sustain any legal summary judgment, the evidence, (the Constitutional legal process is the peoples best interest). FOR JUSTICE -

(2) The Circuit Courts of Maryland (WERE NOT LEGALLY CORRECT) in case CAL 99-15740 by facts, evidence, from case CAE 97-16794 fraud foreclosure on law, state and federal constitution in it's err granting of this illegal affirmative res judicata defense judgment on fraud affirmative defense, clearly confirm by waiver of admission evidence case CAL 97-16794 which all courts had emotional erred to date. by this unconstitutional. NIGHTMARE-

(3) **CONSTITUTIONAL CONFLICT QUESTION THAT EXIST ARE: COMPELLING STATE INTREST AND EQUAL PROTECTION. DUE PROCESS: ARTICLE 1, ARTICLE 3, ARTICLE 4, ARTICLE 6,**

ARTICLE 23, ARTICLE 24, AMENDMENT 1, AMENDMENT 4, AMDENDMENT 6, AMENDMENT 7, AMENDMENT 9, AMENDENT 10, AMENDMENT 14, AND THE BILL RIGHTS CONFLICT IS SUBSTANTIVELY LEGAL UNCONSITUTION AND IMPACT ALL AMERICAN. THE COURT DID ERR THE CASE/ CASES ARE REVERSIBLE ERR BY LAW!

(4) The respondent / bank's bad faith (Intrinsic Fraud) evidence to case Cal 99-15740 actions is in clear legal conflict with good banking rules, laws, facts, evidence, and constitutional process. Which is clearly confirm, and corroborated by the banks own free will filing of an affirmative (Failed), defective res, judicata defense, that clearly came too late, which is (barred by law), and the evidence is confirm fraud, on the clear (Extrinsic Fraud) of evidence all courts lack of jurisdictional evidence by waiver to case CAE 97-16794 is confirmed by the banks agent #1 Friedman's filing an affirmative defense of submission by waiver of admission to this fraud evidence, is the legal controlling wavered authority to this fraud evidence case.

(5) The Maryland Circuit Court did error again and again on law and facts on fraud evidence, on sustaining this defective ones side, respondent's false evidence, by court summary judgment which is clearly in dispute, and is barred by law. The court's summary judgment is defective; the courts decision is with extreme emotional prejudice to any and all of the (Pro se) Petitioner's legal, admissible, relevant evidence on record. The Constitutional Bill of Rights amendments 1-14 is in conflict with the courts discrimination and abandon of due process, compelling state legal interest, and equal protection of any and all legal court obligation to this (Pro se) petitioner's rights of trial by jury, on demand with, or with out an attorney. The petitioners have the right to defend against all evidence presented by the respondent's, fraud evidence, the right to present to all court's with a full

good faith complete case of relevant, admissible, evidence that is clearly guaranteed to all parties, and is under the obligation of all courts to comply, and protect the petitioners, American people, constitutional equal protection rights, amendment 1 through 14

(6) The Maryland Court of Special Appeals did error with extreme emotional prejudice by not administrating any fair justice by it's sustaining of the circuit court error of this defective Summary Judgment, by its unreported defective opinion of this injustice on June 24, 03, as per rule 8-114 unreported opinion by law. This opinion has no authority, and is not precedent with any rule of stare decisis nor persuasive authority to this end. by constitutional Law"

(7) The court of special appeals opinion is misleading, and is clearly misstating the truth of facts as in evidence in the records. The fraud evidence case used as a res., judicata legal authority is the agent #1 (Omission) evidence, of now refuted evidence, and the agent's admission by waiver of this submission is the law on this fraud evidence. The omission agent #1 evidence is clearly fraud. The courts of special appeals defective opinion, has no authority, over this evidence on it's opinion and is not binding on any jurisdictional court of authority, that is higher than the court of special appeals as a matter of law.

(8) The Maryland Court of Appeals denial order with the court having this knowledge is that courts injustice, that appears to be a miscarriage of justice, is with extreme court emotional prejudice, and it is this injustice that is denying the petitioners his constitutional rights to have the Maryland Courts full fill there legal obligation of equal protection to this (Pro Se) petitioners rights. The Maryland court of appeals denying order stating this petitioner's legal response rights' to rules, laws, and evidence, confirmed by case law and well documented is denied, and the respondent's affirmative defense of admission evidence by/ on record, waiver, is confirmed and the court is again not showing the petitioners requested review by certiorari is desirable, and is

(9) The Maryland Court of appeals have/ had the authority to resolve and correct the Maryland court of special appeals unreported opinions, and the Circuit Court Summary Judgment Error, using this defective error to support this defective summary judgment rule 2-501 and 2-323 through 2-324.

(10) The Maryland Court of Appeals by (Constitutional Law) is mandatory should have corrected all lower courts jurisdictional authority, over case CAE 97-16794 as jurisdictional matter, court error, which is now corroborated by the agent #1 with first hand knowledge waiver of admission on the record,

The agent #1 wavered evidence is tainted fruit of the poisons tree, corroborated by the agent #1 wavered of admission. The Poisons tree affects all of the poisons foreclosure evidence confirms by the evidence waiver of admission case CAE 97-16794. and law Court INJUSTICE. This tainted evidence cannot be used to support case CAL 99-15740 as a legal res judicata case of foreclosure defense

(11) The Bank agent #1 Friedman case CAE 97-16794 was filed and accepted as tainted evidence in the U.S. Supreme Court 01-1391 by waiver of admission which is confirmed and corroborated as the truth to this end, and all courts are bind by this waiver as law

(12) The banks respondent case CAL 99- 15740 tainted fraud evidence is corroborated this evidence does not meet the requirements of law, on the Maryland Court of Special appeals unreported opinions which is no legal authority over any (higher court) res judicata doctrine constitutional rights case/ #)3-1391 evidence

(13) The Maryland Court of Special Appeals unreported opinion rule 8-114 has no legal authority over these cases / case CAE 97-16794 evidence and case CAL 99-15740 evidence as a matter of constitutional law

(14) The Maryland Court unreported opinion is not binding on any court with higher authority, over the

(15) The Bank agent #1 Friedman case CAE 97-16794 of it's own free will did file this waiver of admission, which is primary evidence. The agent #1 is aware the agent had lost all appeal rights on this case tainted evidence forever

(16) The Bank agent #1 Friedman case CEA 97-16794 admission evidence is the ruling authority of any and all of this agents' old case evidence as fraud, to all courts lack of any legal jurisdictional authority to act on case CAE 97-16794 from the Maryland Circuit Court through the Maryland Court of appeals on this illegal notice, summons, service, fraud under oath on the court. This agent#1 waiver of admission to this fraud is sufficient evidence on facts to warrant all courts to a finding of the agent #1 as guilty .

(17) The bank/ Respondent and the Maryland Courts are barred by law from using this corrobotated false case CAE_ 97-16794 tainted evidence, as any legal evidence to support a / any legal affirmative res judicata defense of the bank in case CAL 99-15740 Intrinsic Fraud by using this known tainted fraud evidence, to evade a fait legal trial by jury on the petitioners demand

(16) The Bank/ Respondent case CAL 99-13740 (DID NOT) meet the legal requirements (Timely) to law and facts to it's late filing affirmative, (illegal) Res, Judicata defense, to rule 2-331 through rule 2-324, rule 2-501, rule 2-311, with any sufficient legal evidence, from case CAE 97-16794 affirmative defense by waiver of admission as evidence of a fraud foreclosure, this evidence cannot sustain any legal summary judgment, the evidence, (the Constitutional legal process is the peoples best interest). (The Bank/ Respondent can not be prejudice by its illegal act)

(18) The Bank respondent did not raise it's first affirmative Res judicata defense timely on it's original answers and defenses which were filed late on feb. 5th 2002 as per rule 2-321 through 2-324 as required by law The Circuit Court in it's err granting of this illegal,

affirmative, res judicata defense judgment, on fraud affirmative defense, clearly confirm by waiver of admission evidence case CAL 97-16794 which all courts had emotional erred to date. (The (Pro se) petitioner is clearly prejudice by the bank's agent act of fraud, and by the Maryland Court emotion err to this respondent's fraud) **REVERSIBLE ERR BY CONSTITUTIONAL CONFLICT QUESTION** the respondent and it's supporters clearly stole all these many years from the petitioner's family with knowledge, motive, and intent to do the maximum of all damages it has cause, or will cause, if this bad faith fraud of harmful foreclosure is not correct. All constitutional courts should / must honor the constitution and protect the American public from this kind of massacre/ nightmare putting there property at risk forever to injustice illegal fraud foreclosure

(19) The Maryland Courts was required by the integrity of constitutional law, to fairly, under legal due process granted to all parties a court only interest on justice, review the complete case record on all material facts. Evidence to case CAL 99-15740 fraud admission,

(20) Petitioner rights to legal counsel not this TRICKERY

(21) The petitioner absolute night to defined it's position on the complete evidence illegal act of fraud foreclosure

(22) The petitioner as a (Pro Se) pray, absolute right to defend it's position without any Maryland court prejudice jurisdictional evidence is insufficient by law-

(23) The absolute rights of the (Pro Se) petitioner, and defense of his position, all court's review, all evidence before the court for equal protection to constitutional err.

(24) The (Pro Se) petitioner right, receive a non prejudice, non discrimination decision from all court's judgment

(25, The (Pro se) petitioners constitutional rights of trial by jury, can not be rejected to the respondents questionable illegal tactics of bad faith, sustain by court error.

(26) The Circuit Courts of Maryland (WERE NOT LEGALLY CORRECT) in case CAL 99-15740 by facts, evidence, from case CAE 97-16794 fraud foreclosure on law,

List of Parties

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows.

Agent#1 case CAE 97-16794 (Extrinsic Fraud)

Respondent substitute trustees

Alvin E. Friedman and Kenneth J. Mac Fadyen, P.A.
Totmen Building, suite 400
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Ph. # (410) 685-1763

Respondent, Substitute Trustees purchase Department, Veterans Affairs
(Attorney) Laura H.G. Osullivan
Symondes, Oosternout and Curren
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302 Laurel, Maryland 20707
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Bank's case CAL 99-15740 (Intrinsic Fraud)
Respondant/ Bank of America Mortgage (FBS)
(Attorney) Tessa Laspia Frederick and Sean P. Vitrano
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Baltimore, Maryland 20202

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TABLE OF CONTENTS

Appendix		Page
(A) page	COURT OF SPECIAL APPEALS MARYLAND....	2 3
(B)	CIRCUIT COURT OF MARYLAND.....	—
(C)	COURT OF APPEALS MARYLAND.....	—

OPINIONS BELOW

Appendix (A) This opinion of the Court of Special Appeals Sept. Term 2002 Maryland rule 8-114 , Unreported Opinion

JURISDICTION

[✓] For case from State Courts Maryland Court of Appeals No. 280 Sept Term 2003..... (Appendix C)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....

QUESTIONS PRESENTED..... I-F

STATEMENT OF THE CASE..... -1

REASON FOR GRANTION THE PETITION.. 12

CONCLUSION..... 30

PROOF OF SERVICE.....

APPENDICES..... A- - J-

INDEX OF APPENDICES

Appendix

(A) COURT OF SPECIAL APPEALS MARYLA.ND

(B) CIRCUIT COURT OF MARYLAND

(C) COURT OF APPEALS MARYLAND

RECORD EXTRACT PETITIONAL/RESPONDED BRIEF.....

NDEX OF APPENDICES

Appendix

(A) Maryland Court of Special Appeals err unreported opinion of no authority #1351.

(B) Maryland Court of Appeals err #280.

(C) Maryland Circuit Court err case CAL 99-15740

(D) Bank of America/ Respondent and William Smith Petitional ; Mortgage Deed of Trust

(E) Bank of America/ forgery check fraud, illegal harmful foreclosure.

(F) The Bank of America original agent #1 Friedman file Apr.12 2002 notice of waiver to all evidence case CAE 97-16794 (Extrinsic Fraud) To the Supreme Court Case #01-1391 2002

(G) The Bank of America (Original) Agent #1 Friedman file Apr. 12 waiver of admission affirmative defense to all evidence case CAE 97-16794 (Extrinsic Fraud) to the Supreme Court case 01-1391 Sept. term 02

(H) The Bank of America (Original) and only answer any defenses pursuant to rule 2-323, file the (Original) Affirmative (7) defenses, Feb.5, 2002 which does not include a/ any Res judicata defense

(I) The Bank of America (Original) only motion for case CAL 99-15740 defective Summary Judgment, which as a matter of Good Law come too late (Without any timely amendment) and is supported by waiver of admission

(J) The Maryland err and injustice force the petitioner admission case evidence. The risk of (II Nature of the Supreme Court Review), as Maryland Court punishment of the petitioners truth of fact complaint

TABLE OF AUTHORITIES

Cases Page

(1) 10-11

CASE LAW WAIVER The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity , or wrong. An express or implied relinquishment of a legal right. A doctrine resting upon an equitable principle which courts of law will recognize. Atlas Life INS Co. v. Schrinsher, 179 Okl. 66 P.2d 944, 948

(2)

Admission to sufficient facts. Also called "submission to a finding", means an admission to facts sufficient to warrant a finding of guilty. Com v. Duqette, 386 Mass. 834, 438 N.E. 2d 334,338.

(3)

CASE LAW WAIVER A formal waiver of proof that relieves opposing party from making proof of admitted fact and bars party who made admission from disputing it. E-Tex Dairy Queen, Ins, V. Adair, Tex.Civ.App., 566 S.W.2d 37, 39.

(4)

CASE LAW WAIVER Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court. Formal acts done by a party or his attorney in court on the trail of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. Hofer v. Bituminous Gas. Corp., 260 Iowa 81, 148 N.W. 2d 485, 486

TABLE OF RULES

Maryland's Rules

(1) Rule 2-311 Requested motion and requirements
(2) Rule 2-321 Time for filing original answers and defenses requirements
(3) Rule 2-322 defending affirmative defense requirements
(4) Rule 2-323 Legal affirmative defenses and requirements
(5) Rule 2-324 Protected or wavered affirmative defenses and requirements
(6) Rule 2-501 Summary Judgment, evidence, requirements

OPINIONS BELOW

[✓] For cases from the state courts: opinion of the Court Of Special Appeals/ Maryland
The opinion of the highest state court to review merits appears at Appendix A to the petition and is Page 1-10
[ ] report at jun – 24 – 2003 ; or
[ ] has been designated for publication but is yet reported; or
[✓] is unpublished. Maryland Rule 8-144, Unreported opinion

JURISDICTION

[✓] For cases from state courts: Maryland, Court of Appeals
[✓] Petitioner did not file for a Maryland Court of Appeals rehearing due to this court extreme prejudice to this petitioner's evidence, and constitutional rights, and expenses shown here.
The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

	Page
CONSTITUTIONAL AUTHORITY	1---30

Article Number

Article 1, Section 10 Punish without Due process
Article 1, Section 8 The Rights of the U.S. Post Office.illegally impacted
Article 1, Section 7,8,9 Courts Cannot take away Rights Waiver. authority FOR INJUSTICE
Article 3 Appellate Jurisdiction authority
Article 4, Section 2 States Constitutional Duties
Article 6 Constituion Supreme Law of the Land
Article 23 Jury in Civil Proceedings
Article 24 Due Process justice equal protection,

CONSTITUTION'S BILL OF RIGHTS

Amendment 1 The right to my own opinion
Amendment 4 Seizure of Petitioner's Property Article 24, Due Process
Amendment 6 Fair Hearing/ Trial, INJUSTICE.
Amendment 7 Fair Trial by Jury with or without Attorney is constitutional
Amendment 9 Rights Not Mentioned in Constitution
Amendment 10 Power not delegated to States to over ride constitutional right of authority
Amendment 14 Civil Rights/ Equal Protection/ Without Prejudice Due Process reversible err

STATEMENT OF THE CASE

The court did err. On the constitutional request by this petitioner to review, of all the evidence to the Bank's agent #1 Friedman's (Extrinsic Fraud) evidence, all jurisdictional evidence, or lack of all court jurisdictional evidence in the record, and on all fraud evidence to case CAE 97-16794 agent #1 (Omission Fraud) evidence, as material facts to the fraud foreclosure of the petitioner's property/ home, in question. The frauds are confirmed, by the agent #1 waiver, and corroborated by the lack of legal court jurisdiction by this waiver as jurisdictional evidence in the records. The Banks agent #1 Friedman's waiver case is controlling old evidence, which is now refuted, by the agent's waiver of admission. The agent did file of its own free will, its affirmative defense, by waiver of admission, this waiver is the primary evidence, of material fact authority, over this case CAL 99-15740 evidence today, which is the agent's original fraud evidence which is now confirm as fraud to sustain this fraud foreclosure which is unconstitutional. hide it's bad faith

"Point of Law" The bank's agent #1 Friedman did file its affirmative defense by this legal waiver of admission in this U.S. Supreme Court Apr. 12, 2002 case 01-1391. Which is the ruling controlled authority over this case as fraud evidence confirmed by this waiver which this court of Maryland clearly misused as a double standard of illegal evidence on law and fact is unconstitutional. (Appendix G)

The Bank/ Respondent (Intrinsic Fraud) Case Cal 99-15740 was filed Apr. 19, 2002 (Late) as a legal affirmative res judicata defense, to the original bank fraud foreclosure by fraud/ bad faith, and law using this same (Extrinsic Fraud) as evidence from the agent fraud evidence case CAE 97-16794 as the respondent res, judicata evidence to sustain the fraud bank foreclosure. (Appendix I)

"Point of Law" The Law is very clear no party in any action of illegal foreclosure, can ever use a fraud foreclosure

as any legal affirmative res, judicata defense, No party can beaded by it's act of fraud, or prejudice by it's act of fraud. The respondent motion evidence is barred by law, on this fraud evidence, confirmed by this legal waiver

The Respondent case CAL 99-15740 res judicata defense on false evidence is by law fraud, evidence, the respondent clearly with full/ complete knowledge, motive, intent, of this fact, would use this fraud evidence of case CAE 97-16794 to sustain its illegal fraud foreclosure case action, before all courts to this end, which is affected by the banks agent #1 waiver as evidence. (Appendix G-)

The respondent illegal, late res, judicata defense is standing on the facts not legally used in the records (All Court) (No Court) did respect the constitutional rights of compelling petitioner's equal protection rights, and the legal question door was left open by all courts err, and the respondent chose to use this injustice err to it's advantage which is not intended by constitutional law to this end. (Appendix F)

(1) The Circuit Court knew petitioner requested a complete evidence review before any court decision to no avail this is clearly reversible err. The courts must review this fraud evidence on record as requested, By the petitioner in legal defense of this fraud harmful foreclosure. (Appendix C)

(2) The Maryland court unreported opinion rule, 8-144 has no authority, by law, as any legal evidence, but can be use on legal affirmative res judicata defense, on legal foreclosure to the same evidence, But is clearly barred by law to be used as to any fraud foreclosure. (Appendix A) By this injustice-

(3) The Court of Appeals would not confirm the petitioner legal requested petition for writ of certiorari, with clear knowledge of this fraud evidence sustaining this fraud foreclosure which is harmful err. Barred by Law! (Appendix B)

(4) All courts with full knowledge, intent of the appeal process, question on this fraud wavered evidence by the petitioner, the legal question, would now with no legal resolution on law which would lie with a small chance of the (II nature of

Supreme Court review.) The innocent (pro se) petitioner would lose with a very high risk of being made guilty, and the guilty respondent would clearly have scam the courts again and again, and back door the constitution on all court known false evidence, by error confirmed by admission of the guilty party! On (Fraud Foreclosure) all of which was confirm by agent #1 waiver evidence of, the bank case of fraud by its fail fraud evidence, Which clearly evade a fair trial by jury as requested on an illegal summary judgment court err. Affirmative res judicata defense on fraud foreclosure evidence and court err to this end. INJUSTICE-

The Circuit Court of Maryland was clearly not legally correct on its fact's partial evidence review, of fraud, on records and the record court with this knowledge of the fact the respondent did not file a timely case as per rule 2-321, and it's defective defense Res. Judicata motion rule 2-322 through 2-324, and rule 2-501, rule 2-311 did stand on, case fraud evidence by which is confirmed by waiver on the record in the U.S. Supreme Court 01-1391, which is very clear to all now this fraud evidence to all courts do exist and by law will barr this illegal summary judgment, that clearly evade a fair trial by jury, as consistently demanded by this petitioner. The court's err MISSCARRAGE OF JUSTICE-

The respondent took full advantage of the fact that all courts had erred, to date on this waiver (App) this evidence which clearly had sustain the Circuit Court original err, and The respondent Apr. 19, 2002 illegal motion, which the court knew or should have known exist, from the petitioner response in evidence, in the Supreme court, and the all courts err knowledge on the Supreme courts(II review technicalities which may deny, or lack of review of the (Pro se) petitioners case, complete evidence on record request for writ. The Supreme Court did send back the complete record, about the banks agent #1 Friedman, case CAE 97-16794 waiver evidence on records that, clearly show the agent evidence of omission is now this fraud evidence by admission, as an

affirmative defense, by waiver of admission, which constitute facts sufficient to all courts, to warrant all courts, to a finding of the agent (Extrinsic Fraud), as guilty of the petitioner's evidence, and complaint.

The courts err not being resolved as err by the Supreme Court (II) review of technicalities, left the case opened, to the respondent to use the unreported, opinion res judicata policy doctrine as fair game fraud evidence, on a fraud foreclosure, which without any court reversible err decision the court harmful err would appear legal on the record forever.

The Banks agent's #1 (Harmful) fraud foreclosure case CAE 97-16794 (Is now to appear mute) which clearly was in err, and now would be illegally impacted by this harmful court err but the court would not acknowledge this case as harmful err again and again. The court's err was emotional affected by the banks agent #1 Friedman act of fraud and fraud on the court, and the agent #1 legal admission by waiver to this fact accepted and confirmed by the supreme court as harmful err was now (made to appear) mute this action by all of the court is questionable unconstitutional err, when all court knew clearly the respondent was guilty, and this fact left unresolved would make the (Pro Se) innocent petitioner appeal guilty, Forever. BY THIS INJUSTICE-

The respondent chose to use this wavered evidence by the banks agent #1 Freidman's case CAE 97-16794 with clear knowledge of its fraud harmful evidence was from evidence of, a harmful fraud foreclosure and the courts harmful err. The respondent uses this as its advantage for its own free will no party can be prejudice by its own act of fraud to this end. (Appendix F-)confirm by (Appendix G- .)

"Point of Law" The Respondent affirmative res judicata defense on this courts harmful err, did again open the legal constitutional door for petitioner to respond to this defense, using, it to move clearly to all courts with the knowledge, this agent #1 waiver was, the controlling primary evidence, of legal material fact to this truth of fact, of the fraud as

harmful foreclosure evidence and, the agent #1 waiver, on file in the Supreme Court was timely as the authority the controlling and emotional fact, to this truth, to this end. (The court clearly used a double standard on reviewing the wavered evidence) as a material fact. (Appendix G)

The petitioner has a compelling constitutional right to defend against this fraud (harmful) evidence, as it was being illegally use, to sustain the illegal, fraud, (harmful) failed foreclosure, to this end, after the agent #1 clear waiver of admission of the bank being guilty by the banks own fraud failed foreclosure, evidence is now defeated as a Matter of Law! (Appendix I) is insufficient by law- Court Obligation -

The petitioner has a compelling constitutional right of equal protections by law. The equal protection to defend against this(Double Standard of court err) on fraud evidence being now used to evade a trial by jury and to force a (Pro se) petitioner in to silent admission err, to weakened or remove the banks agent #1 Friedman's legal waiver of admission of guilty for this fraud sustaining it's power of, fraud evidence to this harmful foreclosure, The constitutional do not barr this petitioners defense of this TRICKERY by this illegal res judicata fraud harmful foreclosure evidence, to case CAE 97-16794 confirm by waiver. The Maryland Court did err, and if and when the petitioner did not respond to this respondent use of this waiver evidence of admission, the court would emotionally on this respondent err request, the case again be raised on the question of admission, evidence by the petitioner lack of response to this illegal fraud evidence as a question of law, for the (Pro Se) petitioner (Appendix G)

The petitioner knew the respondent, and that court, had full access to the full/ complete records, showing this waiver as harmful evidence of material fact, to the bank agent#1 fraud, and the bank's fraud foreclosure. The petitioner did clearly request to all court's a full constitutional (2 fold) two case, review of all fraud harmful evidence, of all the courts material fact, and fact finding, by ail courts reviewing all of

the evidence, for fraud to this harmful fraud foreclosure. The Banks' agent #1 Freidman's (Extrinsic Fraud) evidence is clear, to case CAE 97-16794, as their fraudulent omission evidence, which is now confirm by this agent #1, as fraud foreclosure evidence, admission by waiver (Appendix F.) The Agent #1 did file an affirmative defense by the waiver, which is sufficient fact in evidence, to warrant all courts, to a constitutional finding, of agent #1 Friedman as guilty, as per the petitioner's evidence and complaint is case CAE 97-16794 review (fold #1) The Maryland Courts decision did not meet the standard of law, review, on this harmful evidence, of fraud foreclosure, the court did err. by (Double Standard.

The agent#1 fraud is, (Extrinsic Fraud) of a jurisdictional matter of law, and as evidence is barred by law, to have any party use this case CAE 97-16794, as legal evidence, to foreclosure. This fraud evidence, is the responsibility of the bank's agent #1 action against the petitioner, and court only, for it's illegal notice, summons, service, perjury, fraud on the court, confirm. All court's lack of any legal jurisdiction to act on this case, to this end, prior to the agent #1 waiver of admission, corroboration is on file.

"Point of Law" The agent #`1 Friedman (Extrinsic Fraud) case CAE 97-16794 fraud evidence is always by law judicated separate, from the banks/ respondent's original (Intrinsic Fraud), fraud evidence to case CAL 99-15740, which is the bank responsibility only, the law required the (Intrinsic Fraud) to be judicated separate so the court can give justice and equal protection, and fairness to any lawful judgment rendered by said court, to each party/ or, to both cases/ parties fairly! Which clearly secure constitutional justice through constitutional fairness, that is in all courts legally administrating, equal protection, equals, justice, on the right evidence? to this NIGHTMARE- OF INJUSTICE.

"Point of Law" The Banks on the right evidence/as the Respondent have a constitutional right of authority over it choice of attorney, and the bank chose the law office of

Friedman and Mac Fadyen, under the protection of the constitution to defend its illegal harmful foreclosure, by its act of forgery Sept.1, 96 to the petitioners payment on record, BUT this (Pro Se) petitioner unconstitutionally lost it's right of an attorney of choice, to the bank and it's agent #1 bad fraud, bad faith action, and the court emotional err, to this fraud evidence. No attorney it right mind would take this case, where he would be damned if he do, and damned if he don't, and be subjected to this massacre of his life, by this back door wall, duress, (Pressure), forever!

(1) The Bank (Appendix II) evidence/ motion, and the records, do not show any timely bank/ response to the petitioners legal service, or any timely requested res judicata amendment, of its original (7) affirmative defenses of Feb. 5, 02 this defective (Res Judicata) defense , which was clearly first raised as an affirmative defense on it's defective motion only. (Appendix I-) is insufficient by law- FOR JUSTICE

(2) The Bank/ (Appendix I) show clearly the bank did raise, the defective affirmative res judicata defense for the first time on it's defective summary judgment motion request of Apr. 19, 02, which comes too late as a matter of law, which is clearly barred by constitutional, law, and lack of any amendment, as state, and federal, law, case CAL 99-15740 is clearly defeated, is reversible err, that can not be sustain by the fraud, harmful foreclosure, on fraud evidence, which is in conflict with rule 2-321 through 2-324, rule 2-501 and rule 2-311. The bank had/ have no legal evidence from the agent #1 fraud foreclosure, on harmful fraud evidence, now is waiver:d evidence of admission, to all of the agents fraud evidence, of case CAE 97-16794 evidence is reversible err, is clearly fraud evidence in fact, and law, insufficient evidence, by failed affirmative defense, on fraud evidence, of fact to warrant, all courts to finding of the banks respondent as guilty, of the petitioners evidence complaint on record. The respondents failed, defective affirmative res judicata defense, which resolves all of the case merits, facts in the petitioners

favor the court as a matter of law must award the legal resolution, To the petitioner complaint.

"Point of Law" The banks agent #1 Freidman has the constitutional right to defend the bank illegal fraud action whether, or not the bank and petitioners evidence, will show the bank to be innocent, or guilty, of the illegal harmful foreclosure, by the banks forgery payment of bad faith, use to create this illegal harmful fraud foreclosure (Appendix E)

"Point of Law" The Bank has no power to force its attorney the agent #1 Freidman to commit a/ any crime/ or cross the (legal) Line, of authority ever, or committee (Extrinsic Fraud) all to sustain this fraud harmful foreclosure. The Bank's agent #1 can just say no to any criminal request! The agent #1 (Extrinsic Fraud), is confirm, and is corroborated by it's filing of it's affirmative defense by waiver of admission, on all of it's fraud evidence to case CAE 97-16794 fraud foreclosure, The court must rule on law, on all evidence for the petitioners, and a award damages, to a resolution on records as reversible court err, to both cases are admission evidence of equal justice, to all court err. To this end the banks agent have lost all appeals rights.

The Bank/ Respondent, and agent #1, knew all of the above, and more, before the bank did file its defective motion, defense, for summary judgment (Too Late), when the bank did file its original affirmative res judicata defense, using the known fraud evidence, from the banks agent #1 waiver | case CAE 97-16794 as evidence, which is barred by law. The bank, or agent #1, made no attempt to resolve the bad faith harmful action, outside the court err, which is clearly being used to sustain, this fraud from 1996 to date on bad faith, to evade a trial by jury, on fraud evidence, and damaged the (Pro Se) petitioner forever. ON THIS NIGHTMARE-

(1) The Banks (Appendix H)/motion, do not show any (Res judicata) defense in the banks original late filing of it's answers and (&) affirmative defenses to rule 2-321 through

2-324, rule 2-501, rule 2-311 as a matter of law, The banks res, judicata defense comes too late (Appendix I).

(2) The Bank/ Respondent fraud harmful evidence did not meet the requirement of law or its Burden of Legal Proof in its intrinsic fraud case CAL 99-15740, which is clearly with out any legal compelling evidence of any material facts to sustain its defective, insufficient affirmative res. Judicata defense. The Respondent's only evidence on record lie with the fraud harmful, compelling wavered evidence of the admission of the bank's agent #1 waiver as confirm in this, compelling fraud foreclosure evidence, of case CAE 97-16794 as truth of fact, and is barred by Law! From the bank use. ON THIS INJUSTICE-

(3) The Bank/ Respondent's did not place any legal compelling evidence of any material facts before any court to legally sustain, the Circuit Court harmfully defective, summary judgment decision, which is clearly made on fraud (On side) erred, evidence to case CAE 97-16794. The bank/ Respondent case Cal 99-15740 on this fraud res. Judicata evidence is clearly defeated, clearly barred by law, and did not meet the compelling requirement of law, or legal evidence, on a legal stand of all court review. (Appendix I)

(4) The Maryland courts sustain this defective summary judgment is by a double standard review of law and fact on fraud harmful compelling evidence of injustice is unconstitutional. The court emotion prejudice to this (Pro se) petitioner evidence is very clear, the court did on this very same day as the sitting authority, clearly administer justice on all other waiver evidence defense cases, on the same date as the court made this harmful err on the (Pro Se) petitioner legal evidence the agent #1 legal waiver as evidence in case CAL 99-15740, the court double standard of legal waiver is clear evidence is unconstitutional with extreme prejudice to the (Pro Se) petitioner legal evidence, is a court err of a double standard, on law and fact evidence, By waiver of admission authority, Legally corroborated by material fact.

CASE LAW WAIVER The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity , or wrong. An express or implied relinquishment of a legal right. A doctrine resting upon an equitable principle which courts of law will recognize. Atlas Life INS Co. v. Schrinsher, 179 Okl. 66 P.2d 944, 948 — this fraud foreclosure, confirm by waiver evidence, corroborated by admission evidence, the Bank's Bad Faith, and Maryland Courts in Justice

(3)

CASE LAW WAIVER A formal waiver of proof that relieves opposing party from making proof of admitted fact and bars party who made admission from disputing it. E-Tex Dairy Queen, Ins, V. Adair, Tex.Civ.App., 566 S.W.2d 37, 39.

The Maryland Court's/ Appellate courts defection (Err) decision is in clear constitutional conflict, with others states decisions on illegal fraud foreclosure, on waiver, waiver tainted evidence, admission evidence, as primary evidence, of material facts, as defined, by constitutional law, which is clearly confirm and corroborated by case here in

(4)

CASE LAW WAIVER Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court. Formal acts done by a party or his attorney in court on the trail of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. Hofer v. Bituminous Gas. Corp., 260 Iowa 81, 148 N.W. 2d 485, 486

The Maryland Court's err, misuse/ abuse the Standard of Review, process, by emotionally forcing this case to face the (II Nature of Supreme Court Review) Policy, all to punish the petitioner, and force other (Pro Se) American to give up their guaranteed constitutional rights. to appeal(Court err injustice)

All to sustain the Maryland Courts emotional injustice by this err, which evade the truth of facts, evidence, by waiver/, admission, to this miscarriage of justice, NIGHTMARE-

The record - Admission to sufficient facts. Also called "submission to a finding", means an admission to fact sufficient to warrant a finding of guilty. Com v. Duqette, 386 Mass. 834, 438 N.E. 2d 334,338(- - - - - - - (Appendix G)

CONSTITUTIONAL QUESTIONS, ISSUES, EVIDENCE, LAW, IN CONFLICT WITH MARYLAND COURTS DEFECTIVE SUMMARY JUDGMENT FOR INJUSTICE -

clearly barred by constitutional, law and lack of any amendment as state and federal, law case CAL 99-15740 is clearly defeated, is reversible err, that can not be sustain by the fraud harmful foreclosure, on fraud evidence, which is in conflict with rule 2-321 through 2-324, rule 2-501 and rule 2-311, and the bank had/ have no legal evidence from the agent #1 fraud foreclosure, on harmful fraud evidence, waiver.

The Bank's agent #1 Friedman waiver file in the Supreme Court corroborate the petitioner's position clearly state the (Pro Se) petitioner complaint/ evidence is true forever, (A) The petitioner is not barred by any collaterally estoppels from any court emotional err, from raising a defense on the Bank/ Respondent using the agent #1 legal waiver as for it's fraud harmful evidence, and the law, fact, illegal affirmative res judicata defense evidence action of which the court did truly err, as reversible err. (Appendix I)

The Maryland Court's did err, with extreme emotion, prejudice, to the (Pro Se) Petitioner's Constitutional Rights, Bill Rights, amendments 1 through 14, is in conflict, with Maryland Courts err, to this end. The two cases in question are clearly reversible court errs. The (Pro Se) petitioner prays the U.S. Supreme Court award a Writ of Certiorari, and pressure the constitutional process and people's trust in their constitutional protection forever! ,from this court injustice

THE REASON FOR GRANTING THIS REVIEW

This Supreme Court's review is compelling confirming evidence, of the banks and it's support bad faith as to this fraud harmful foreclosure action, and the Maryland Court's compelling err by abandoning the constitutional process used to sustain this banks bad faith. nightmare-

This review request is on compelling petitioner's primary admission evidence, by the respondent and it's agent #1 Friedman compelling, waiver of admission evidence, as a/ the controlling authority, By this legal evidence. You can't enforce law, by breaking The laws .

This review is compelling constitutional Bill of Rights conflict amendment 1-14 equal protection, preservation as clear evidence, from the U.S. Supreme Court that will forever, impact all court's compelling review, of fraud action, and any court err, on this evidence, and it's disguise of due process, which clearly destroys the people's trust, and the integrity of the legal constitutional process, to this end. This review will deter all courts, from abandoning the constitutional legal process, and the courts illegal behavior being above the law, constitution, and people interest/ trust. The constitution is the law of the land! The courts only interest (Lie) in its ability, in administrating legal justice (Not injustice) as the Maryland Court has clearly done. The lower courts have a legal obligation, interest, to preserve the Constitutional law, as it is defined., By the U.S. Supreme Court to date, in the people best interest. for justice-for all.

The Lower court must not ever misuse the U.S. Supreme Court police II Nature or Supreme Court review to punish this (Pro Se) petitioner. For this legal defense by this compelling waiver evidence of admission to a fraud, of harmful foreclosure, the petitioner defense, which is constitutional and in the publics best interest, and affect all home owners, and would be home/ property owner, which is QUESTIONS OF CONSTITUTIONAL LAW, COURT of this constitutional evidence by Maryland Courts to protect all Americans Bill of Rights amendments 1 – 14- is

the American life long dream. (Please see the congressional hearing investigation of 2000 through 2001, under oath.) On the people's request/ need of its equal protection as guaranteed by the constitution for justice-

The congress conclusion confirms the people ask for, and need help of equal protection against the bank's, and other in the fraud financial operations against the public interest, and illegal fraud foreclosure.

(1) The Bank's and others bad faith action of this fraud foreclosure as evidence, is very clear and the court's err, in sustaining this illegal act, is a living hell to this petitioner and family's, which clearly makes our life and future a living nightmare, to the public trust. "Question" How can this happen today when the Supreme Court meet preserve the requirements of the compelling constitutional equal protection granted by the Bill of rights for all Americans and hold fast to no one is above the law. and injustice-

(2) The Maryland Court's must constitutionally protect the petitioner, Bill of Rights 1 through 14 as granted/ guaranteed, and requested by the petitioner's timely, on this fraud foreclosure harmful court err. Injustice-

(3) The Maryland Court's must protect the public/ American people's constitutional right's/ as guaranteed in the Bill of rights, to keep the people and their property safe from this unconstitutional act, Illegal seizure of an American hard earn property by the bank again and again. And to keep the people's trust and best interest of liberty to live the American dream, and not this unconstitutional nightmare of case CAE 97-16794 evidence of fraud as presented to Supreme Court case by waiver and case CAL 99-15740 fraud foreclosure compelling confirm fraud evidence by the respondent bank and it's agent #1 Freidman admission by legal waiver as compelling evidence to this end of all courts err. Sustain by injustice-

"Question" This court err with knowledge of the fraud Action scare the American people to death, on this unconstitutional nightmare how can an innocent free person under constitutional equal protection, by rule/ of good law, and the watchful eye of all court, have that same court err, make the innocent petitioner, guilty, of the admission party, guilty response, to the crime. which is just short of a legal confession. You can't break, the law to enforce the law-

(4) Under constitutional law the integrity of the process demand, guaranteed, no person, or ground/, or act of the person's is above the people's law, not by title or position. to the justice-

"Point of Law" The sitting formal president (W.Clinton) is living proof, of that constitutional compelling truth. Of equal protection under the law, and no one is above the Constitutional Law! This case truth under oath, of this formal president, impacts this bank, and its agent #1 fraud on the court, to evade a trial by jury.

"Point of Law" No party/ person can legally be made to look guilty or be guilty, punish, for, by the other party crime on court records, and the court with this knowledge of the record as fraud compelling evidence of admission, sustain the harmful injustice.

"Point of Law" No court can legally punish an innocent person, Party, (Pro Se petitioner), when the court have in the record, compelling evidence of fraud, by the opposing party. The respondent, by compelling admission of this fraud, by waiver by the respondent, which is just short of a legal confession by law. This is clear court err, on emotion injustice, that can equal a miscarriage of justice, if the err is not legally corrected, all this to evade a fair trial by jury, on compelling petitioner evidence, of this fraud foreclosure omission, now refuted admission by the bank, agent #1 primary evidence. by Constitutional Law equal protection.

(5) The Maryland courts have been given the people's trust, by the people, and its constitutional law power,

"Question" Can/ will the constitutional process; Bill of

Rights amendment 1 through 14 grantee's enforce/ protect this proven innocent, (Pro Se) petitioner's proper right from the Maryland court same err, again, and again, on fraud evidence of case CAE 97-16794 and case CAL 99-15740

This case/ cases, truth of facts, evidence of fraud, (Intrinsic), and (Extrinsic Fraud), foreclosure admission is evidence on record clearly shows, the Maryland Courts emotion decision with extreme prejudice is clearly harmful evidence by court err, is the question of Law! INJUSTICE

This case/ cases, clearly are in bad faith, on fraud action evidence, by both the bank, and its agent, is in evidence of admission on the record, to this compelling illegal fraud foreclosure. The Bank of American and it's agent from all of it's admission, which in it's truth of facts of both admission, is in evidence, on record, as a fraud foreclosure, confirm by admission, by both respondent parties, evidence, of material facts, to this unconstitutional, act, with knowledge, motion, and intent, to evade a Trial by jury.

The Maryland Court did abandon the constitutional process/ protection, which is the people's best interest in constitutional due process, grantees, all American equal protection of it's bill of right's, and clearly is the constitutional purpose of justice, rest/ lie with the due process, of respect, acknowledgement of the evidence, rule of law, on truth of material fact, as evidence, on the record, will be greatly impacted by the purpose of all courts legal construction of this fraud foreclosure evidence, illegally sustain, admittedly is not the interest of law, justice, to serve fairness in all courts decision on law, and the courts wiliness to the administration of justice, which will impact all public interest, public trust in the system, forever on this review. OF COURT INJUSTICE -

"Point of Law" No one who commits this crime is above the law. (Point) The formal sitting president of the U.S. was not above the Law! And the constitution stood its ground, and the national is stronger for it (Question) then/ now, why is the bank and its supporters appear to be above

the constitutional law, and can destroy the (Pro Se) petitioners, and legal constitutional process at their will. How can the public protect it's self from this kind of illegal act of fraud, with out it's granted constitutional protections bill, of rights, being preserved. That clearly show the court err, and it's impact, on the public, American people, American dream, hard work, and savings. Banking, home owner, and would be home owners, residence, under legal constitutional protection, and the courts preservation, is clearly In, this defective Summary Judgment, Supreme Court review of this default, is the constitution best interest, on it's admission, which is sustained on fraud evidence , and the case #2 failed affirmative res, judicata defense, is clearly using this fraud foreclosure , as fraud evidence with the clear knowledge it is fraud evidence, all to evade a trial by jury, and keep the petitioners stolen property, by removing the agents waiver of admission from the record on court err. INJUSTICE -

The court err, amending the constitutional protection in this way scare the American people to death, if the Supreme Court with the constitutional authority of a life time, can't, and want stop, and correct, this bad faith harmful fraud foreclosure, on this admission evidence, then all of the people's constitutional protection is lost forever. The bank and it's supporters, by this back door unconstitutional scam, have a legal/ or illegal right to steal any person home/ property, and the Maryland court, the right of search and seizure, of any property, on an insufficient, illegal evidence, and the constitutional Law of the Land, be dammed. This is the people very loud cry for help, and a clear statement of fear, to stop this night mare of madness, from repeating it's self again, and again, by hiding behind the court same err here in, another banks bad faith for ill-advised profits. This unconstitutional process, to evade a fair trial by jury! This price is to high, to the American peoples to sustain by compelling court err, on admission evidence this harmful fraud foreclosure. INJUSTICE-

The bank's bad faith nightmare, of knowledge, motive, intent, of serious damages, to the petitioner, and the American constitutional process, confirm by this evidence, and the evidence in case CAE 97-16794, case 01-139 as Supreme Court, case CAL 99-15740, and case 99-15761 Maryland Court of Special Appeals, and court of Appeals, which is corroborated by the congress as verification requested by the people, and HUD secretary all housing authority across the nation, and some in the bank, business, the respondent Is out of control, and please see this evidence. due process- To this injustice damages-

The cost of this unconstitutional, fraud harmful foreclosure, to the people's, judicial system, the legal system, the rule of law, the law, state, and federal, the constitutional process, which clearly by this injustice put the integrity of the process at risk. The people are the court of Maryland interest. Which is lost on this court err, again, and again. The Maryland (injustice) court err, did not learn anything from it's err of case CAE 97-16794 evidence, and the court made the same err, on this evidence, and the court made the same err on this evidence in case CAL 99-15740 miscarriage of justice, on one sided respondent fraud harmful evidence, with full knowledge, the (Pro Se) petitioner had the full documented case evidence, to legally send this case to trial by jury! IS THE CONSTITUTIONAL LEGAL PROCESS -

(1) The Maryland Court WOULD NOT- DID NOT let the (Pro Se) petitioner's place this admissible evidence of facts to support the cost, damages of the respondent's bad faith, breach of contract, to this fraud foreclosure to this end on the courts record. The injustice err of the court (Did Not/ Should Not) Change The Law for the Respondent and it's Supporters Bad Faith damages with knowledge, motive, and intent to back door, and damage the process.

(2) The cost of constitutional rights, due process, to the people, and (Pro Se) petitioners and family. The cost of people, and (Pro Se) petitioner's equal protection, by the granted protection of the Bill of Rights amendment 1

through 14, by the court err, again, and again. Which clearly sustain the respondent's bad faith, of this illegal fraud foreclosure on court justice, to this miscarriage of justice to this end? Is Unconstitutional - and bad faith grudge .
(3) Some of the financial damages to the people risk, and the Smith family directly. cost of being innocent (Pro se)
(4) The cost of mental duress, mental distress, the cost of mental health by being force to this injustice to date.
(5) The cost of physical bodily function lost, by being force to live in a van, (Year round conditions) took a great toll, on the petitioner's health 1996 to this end.
(6) The cost of being innocent of this illegal foreclosure, and the respondent, and court, with knowledge of the respondent's guilt, and the petitioners being innocent of this bad faith act, on a made hard case, to sustain bad law, (Err).
(7) The respondent's attempts, and manipulation, of the facts, evidence, process, to stand the constitution process, on it's head, and reward the guilty respondent (For evidence a trial by jury) and for his waiver affirmative defense admission evidence, and reward the bank for it's illegal (Res Judicata (Late) defense, of an unconstitutional action to evade a trial by jury, To this unconstitutional scam .
(8) The record will clearly, show the respondents all knew (the evidence by legal records,) the respondents had committed this bad faith crime, cause this fraud damages with full knowledge, motive, and intent. The damages that confirm, is not any coincident, the late damages are timed with all court err/ action. Injustice -
(9) The record will clearly show the respondents knew, they could legally resolve this bad faith action up front at any time, (But), by their greed sustain by (Court err injustice), The respondents choose of their own free will to disrespect the people constitution process, (To make sure the petitioner had no, business, no property, no money/ no refunds, no time, to raise legal funds, meant no appeal, mean no public knowledge of any of the legal primary

facts/ evidence to be used to legally resolve this crime on petitioner and public. constitution process

(A) At the 8-6-99 court hearing (The court with the first time having the two parties in it's present, stated clearly/ requested from the bench, on tape, for the respondents to sit down with the petitioner, to resolve this mess the respondent was making out this legal process, the facts was clear, the court was only to decide on law, if a-any-one material fact existed, to send this case a trial by jury.

(B) From 8-6-99 to date, to this end, The great outside- of record pressure, duress came down hard,(for this hard case on bad law,) clearly to make any and all person, title, position, who would try to legally resolve this bad faith action by constitutional law, life a living nightmare of hell to this end.

(C) The respondent having no authority, no grounds, no constitutional law, which is clearly, corroborated to this Supreme Court, by evidence, to this magnitude, the respondent have absolutely nothing to lose, when they are protected by court err, which the court will not correct. The petitioner and family the people did not NAVIGATE the appeal process, and (the II Nature of Supreme Court Review.) the constitutional protection process! Is lost.

(D) The American people that know this case/ cases can't under the Maryland Court's interest or lack of interest in all of this evidence being on the record cant damage the constitution truth and trust of the process to this end.

(E) The matter of law all damages to the cases, that is directly or indirectly related as damages of any merits are Charge to the guilty respondent's admission of guilty.

(F) As a matter of law the respondents bad faith with knowledge, motive, intent of their breach of contract, and all there after to this fraud foreclosure, should by law be three times the cost, interest, charges, damages, and punitive damages for their intent of bad faith action, and fraud on the court/ American people.

10.) The Respondent has all the records to confirm, corroborated, the (Pro Se) petitioner claim/ evidence here in, all of which the Maryland Courts would not let this petitioner place before any court, because the court would not respect the petitioner's constitutional rights, by the Maryland Courts abandoning the constitutional evidence process/ and review process is unconstitutional. INJUSTICE-

(A) The Bank's records, the Veteran's Affairs, the petitioners, the attorney of that time, records will clearly show, (The bank did try to run this unconstitutional back door scam of (Illegal) Fraud Foreclosure with knowledge, motive, and intent of bad faith, on these (Same) petitioners with extreme prejudice discrimination in (1981).

(B) The petitioner bought this home in question from (Ryland Mort. Company) and paid Ryland more than the required down payment! In good faith!

(C) The bank acquired the loan, and ran their first back door scam, of illegal harmful foreclosure on this petitioner

(D) They had/ Have all the records, and have been tracking all of the (Pro Se) Petitioners records in/ on the system to date. To this end!

(E) The Bank in (1981) places an illegal foreclosure sign on the property in question. The bank claim was stated clearly as disputed by (Ryland Company to by false). (DEFENSE) -

(F) The bank still would not back off, or correct its damages, by this illegal harmful foreclosure attempt.

(G) The petitioner and family own a small cleaning company, The Professional Progressive Cleaning Service, an attorney client of the company, advised us to get an attorney, and referred us to a your man who had just pass the bar! Who took our case for a $1,000, up front.

(H) The attorney sat, Wrote (V.A.) and stated the law, the family, and the (V.A.) American people mandate to protect this retired (Vet) and which V.A. fail to do so, the attorney had the will to bring charges, on the (Bank and V.A.)

(I) The (V.A.) than (only) Step up, and enforced the rules / laws, petitioner constitutional rights in writing only.
THIS IS THE CONSTITUTIONAL LEGAL PROCESS-
(J) The attorney sent a copy of both letters to the bank, the (V.A.) sent its copy to the Bank, to advise the bank they was to clean up its credit mess, and remove the fraud from the records, the bank appeal to comply and ran for cover, but still use their back door Unconstitutional scam to date-
(K) The attorney made sure to all, the banks supporters and fraud, scam, opps, err position, was of the type, to hole a bad faith grudge, on the fraud foreclosure, and that all of those records should be preserved, the petitioner gave them all a full record! OF JUSTICE constitutional rights protection,
(L) The attorney was right, each time the (Pro Se) petitioners would apply for a loan, the bad faith act would appear, for damages, on the banks record to force fraud
10` In about 1995 the (Pro Se) petitioners advised, (A.V.), (The bank), The Navy Federal Credit Union, who holds the second mort. On the home in question, and the All State inc. policy co, the home, all knew the home was to be sold for at that time $230,000. justice denied admission evidence,
(A) All of the above was given timely notice, that the (Pro Se) petitioner has a renter/ buyer in the home who had signed a agreement to buy this home for $229,500
(B) The renter/ buyer was living in the home under the agreement of paying $1500, plus U.T., and up keep, each month until the home was fully paid for. The Bank tracked this sale event why? And it's payment check's place in the N.F.C.U. each month by the 13th of the month.for bad faith
(C) The Bank knew I did not live in this home, and was contacting this (Pro Se) petitioner in his Florida home, of 1001 Saddle Hill rd, Deland, Fl, but for the respondent to run this back door scam with the greatest damages to the petitioner, they had to destroy the sale of this home, the bank on it's (Opps err defense), the respondent begin to send this illegal fraud foreclosure information, to this home in question, some times address to the renter buyer, the

renter/ buyer in fear, moved away? The (Pro se) petitioner would have to eat this great lose of the bank, and with extreme duress, And no one would rent or buy the home in question under this duress to this end.

11) All State Inc Company had done an investigation on This (Pro Se) petitioner financial holding in about 1995, and reach a finding of the (Pro se) petitioner value access to be about $ 2,000,000. For this Inc. purpose of life Inc. for the family's protection! Holdings was to be covered by all state Inc.

(A) The bank/ respondent would contact AllState on the home in question (Condition), and force AllState to cancel the coverage on this (Pro Se) petitioner's property without any AllState inspection of the damages to date.

All State did not fulfill its requirements to the home owner's contract. The (Pro Se) petitioner sent by certified mail, a timely notice to (V.A.) (All State), The bank all to no avail. The bank back door scam was at work, and very strong. The U.S. Supreme Court, admission waiver, the bad faith, fraud on the court by agent #1 Friedman's case CAE 97- 16794 Supreme Court #)3-1391 is clear evidence confirm by waiver of admission show just how strong, and clearly show the bank contract with others, and it's supporters to be out of control, and the court denial of writ impact and enforce the bank position of being still out of control, and the bank to day is still out of control to this end.

(B) The (pro Se) petitioner try to sell the home the Banks Bad faith action block All sale, and scared the realtor to death! Please see Re/max realtor service case 99-15761 on appeal in Maryland Court of Appeal on 2002 on the courts same evidence err, constitutional err, against the (Pro Se) petitioners rights. to the guilty respondent's admission

(C) The Bank stole my home and misused, abused, the system, under court err, authority, to confirm their bad faith fraud foreclosure, to this end, the bank clearly has it's bad faith hands around the (Pro Se) petitioners neck, and it squeezing the constitutional protected life, rights out of the

American people, and (Pro Se) petitioners, right in front of all Maryland Courts to this end, they have no constitutional rights, protection if no court will enforce theirs rights ?

12 The (Pro Se) petitioner DO has constitutional rights, and must fight to keep those rights alive, for this review. The petitioner needs to raise cash, money, the banks bad faith is blocking, any, and all sale, of any petitioner properties to this end (life a living nightmare of hell).

(A) The Bank/ Respondent had put this bad faith, fraud foreclosure of intent, on this (Pro Se) petitioner good (THEN CREDIT) the petitioner could not get it removed to this end.

(B) The petitioner had to act fast if It was going to raise any money to impact, and protect my constitutional rights, from this living nightmare of hell! To this end!

(C) The petitioner contracted United Lending Corp for a first loan; I have a Florida home that was valued at about $375,000.

(1) United Lending offered me a loan of $125,000 at about $750 a month (P& I), this money was to be used to protect my property, quality of life, liberty, and constitutional compelling rights guaranteed, by law! To this end! JUSTICE

(2) I am retired military/ navy with a top level security clearance at risk, that spans a detail investigation of my whole life, on information that reaches the highest level of American protection in side and out of this nation. This bank bad faith takes this all away. The bank knew this, and their lie, would not stand up against the constitutional Form and these people's investigation, which is guaranteed to this end! (To the constitutional protection process! for JUSTICE)

(3) The Respondent knowing, what the loan would be for, and for how much this (pro Se) petitioner and others knew, I would fight, the respondent then contact United Lending Corp, and worked their back door scam, fraud foreclosure, on them! (With clear knowledge if I Turn down the chance of this, I would have no place to go, for a loan and could never to be able to rise at age 60, this loan again! on credit-

(A) United Lending inform the petitioner of these changes to the (Needed) Loan. The same $125,000 loan against my $375,000 home would cost me, under Bank America fraud foreclosure pressure, (Interest only), about $1,606 a month interest only, forever, to over $600,000 pay back! (Please be advised) under this bank fraud pressure/ duress I had no choice, but to try to hold on, for my constitutional rights guaranteed, (Hoping) some court would cover my families rights, TO BE! To this end! NAVIGATE the appeal process,
(B) United Lending gave the petitioner a signed letter to this effect, of why United Lending took Bank of America advice, and protected themselves, from the Banks respondents now clear manipulating, and intimidation through this back, door bad faith credit abuse! This is barred by law! All courts can clearly see the people property is, and are at risk by this bad faith act.
(C) The United Lending loan has been Sold to Bank/one who enforced this scam to date, this (Pro Se) petitioner have paid on this clearly questionable, bad faith loan, a cost $100,000 and going on/ raising on this bad faith fraud foreclosure, that clearly intent banking, cross this clear line of a fiduciary duty, trust (impact all Americans home owners) and the II Nature of Supreme Court Review.
(D) The Bank/ Respondent are clearly, sustaining its bad faith fraud foreclosure on the many Maryland Court errs to date, to affect any Supreme Court review chance Question is this action unconstitutional with extreme prejudice.
(Point) Without any honest credits, this petitioner can not raise any money, and not being able to raise any money by the (Pro Se) petitioner being able to sell property at a fair price, all due to the respondents bad faith, back door action, sustain by court err, The banks/ respondents continue to apply great pressure on it's supporters to also act in questionable bad faith! Because no court can/ will Stop them to date no constitutional trial by jury as guaranteed "Question" This court err with knowledge of the fraud Action scare the American people to death, on this

(E) Bank/one acquired this loan and pulls/ is pulling the same scam on this (Pro Se) petitioners as the respondents Fraud, has files on it's admission to!!! Date

(1) Bank/One calls the petitioners home a few times each day on this fraud, "late payments," on this fraud "no payments," Which all are paid by certified U.S. Mail.

(2) The Petitioner had sent the Bank/One president many certified mail letters in dispute, with the primary evidence of proof all to no avail, the calls, and false, letters, of Bank/one appearing to help, just keep coming, with Bank/ones knowing there will be no constitutional trial by jury as guaranteed by the Bill of Rights, to resolve this bad faith act. The Bank is safe/ protected by courts err to commit this crime with knowledge, motive, and intent. (Please Be advised all payments to Bank/One acct# 7645145629 is sent and confirmed by the U.S. Postal Service Certified mail, and overnight express mail, Certified, to no avail, until mail fraud charges was to be filed!(intent of bad faith, on discrimination)

(3) Bank/one did place this known fraud on the petitioner credit, just as Bank of America did, to control the credit, and keep the petitioners from raising any money, to defined my hard earned property/ business/ contract jobs for all those years.

(4) Anyone who have any legal interest in constitutional justice, honest, just see this (Pro Se) petitioner's credit report before the bank/ respondent's bad faith, fraud harmful foreclosure (On forgery evidence) and compare 1995 credit and 2003 credit! Of unconstitutional fraud, by all parties who took part in this illegal act of fraud

The petitioner's home of the respondent's fraud in question, have a legal second mort. Held by the Navy Federal Credit Union of about $100,000. The petitioner did file timely, many notice/ dispute letters with all needed documented evidence, on the Bank of America's fraud, and its great damages. To this loan/ property With the N.F.C.U. president to no avail many times!

(A) The Respondent pressure, and applied, the N.F.C.U. will/ did act in bad faith, and went after the petitioners navy retirement pay. To effect all review

(B) The navy retirement pay was sent to this N.F.C.U. #1768875 (Now Number) from the petitioners SS# 262-48-2415 navy retirement from 1975 to date

(C) N.F.C.U. under the respondent's duress/ pressure would/ is now holding this (Pro Se) petition retirement pay, with out any legal authority to do so. The petitioner did file a few timely dispute statements with the N.F.C.U. president to no avail, the N.F.C.U. is telling the same lie that the respondent told to all the court, (To avoid a fair trial by jury) The petitioner did send a timely notice to the navy to stop this check (Please be advised the Navy Federal Credit Union did not have any authority to hold this pay, have no court order, no judgment.) But they still hold the funds, money, retirements pay to day. Any fair reasonable investigation will clearly show the timely fraud is to timely effect all review to all court need action by this petitioner to respond and it's money to meet that requirement Of all timely review-

(D) The records show clearly that the petitioner needed the retirement pay, to hold on to it's chance of constitutional rights of equal protection and trial by jury, no money, no appeal, if the petitioner cannot timely meet the requirements of a legal appeal this injustice. Will become this miscarriage of justice to date! On Maryland court err corroborated

(E) The social security people (Saw through the scam, the respondents bad faith, and paid the petitioner his back pay, the petitioner used this 15,000 plus 3,000 saving to hold out, for a fair trial by jury to no avail, injustice! ON court err, on respondent's fraud foreclosure to this end. To impact review

(F) The petitioner last back operation/ from the accident $35,000 all used to hold on the property in question for

a fair trial by jury, all of which Maryland Courts would not honor constitutional justice. Justice delayed, is justice denied, confirm, by both respondents admission evidence, and case law! unconstitutional

(G) The petitioner paid $7,500 for a legal bond, to hold on to the fraud foreclosure property, with the Maryland Court having knowledge of evidence, (fraud in question) confirm by the respondents admission waiver. now the same bank/ respondents will with it affirmation defense failure of admission, in the Maryland Court waiver defense (and the Supreme Court) will sell the petitioners property, with clear knowledge, motive, and intent to abuse the process, to maximize damages to it's fraud question, where do, or will this petitioners get the money to pay for my two kids schooling / future, protection to this day! And appeal process. Injustice

(H) The petitioner has two kids taken off of the system, now the petitioner has to ask the system, for the need of help for these kids. Which are Americans under the petitioner and wife love, protection, with constitutional rights also, question can any court use to sustain this bank's bad faith and be fair/ protect/ preserve the constitutional bill of rights. To this court injustice

The Bank/ Respondent knew, the petitioner asset and liberties, and still the petitioner was able to tell any and everyone with any legal interest the truth, to no avail

The Bank/ Respondent went out this time to compelling, illegally, destroy the petitioners and family ability to meet the financial requirements of the appeal process to date to this end. Is unconstitutional

(1) The respondent's move #3 and others kept up it's bad faith pressure on the petitioners payment $1605.57 interest only A month

(A) The petitioners pay Bank/one $1605.57 each month (Now)! As per law! (P and 1) (Because of this appeal impact) In jury/ Bank/one would destroy this payment-

(B) The Bank/one in law would key $1,105.57 as false payment the bank move #2 in less than this amount.

(C) The petitioner's bank SunTrust would pay the Bank/one key in amount as per law!

(D) Now the door was open, for Bank/one to claim this account was in default, paid (Late), and too little, in money payment For illegal Foreclosure,

(E) The petitioner return check clearly shows $1,605.57 amount to be paid for the loan! SunTrust knew, and confirm it was Bank/one errs, only? SunTrust paid what bank/one keyed in.

Bank/one would not back up, and note the correction Timely! This is well document. bad faith action,

The Respondents and others made this bad faith move #1 with the N.F.C.U. to pressure illegal holding my retirement pay, and my appeals are due May 13, 03

(A) Bank/ Respondents move #2, knew the petitioners cleaning service (Was at risk), had been damages down from over $5,000 a month to $1,700 and Warren pub. Communication service was $1,500 a month of that total

(B) The petitioner had been with Warren publishing under contract for over 20 years, warren pub, all banks with SunTrust bank.

(C) The petitioner had been with SunTrust banking for about 20 years Acct# 1769717

(D) Warren publishing paid the petitioner it's check #43602 about 4-26-03 the petitioner put said check in it's account# SunTrust 001769717 about 4-27-03 Warren Publishing has money in it's account to the amount to cover this check for years to come?

(E) The Petitioner went to SunTrust Bank to get $100 SunTrust Management told the petitioner he had no fund, money, and that SunTrust is sending the warren publishing check back, and will not tell the petitioner why!

(F) The petitioner and others is well aware the case/ cases pressure in the Maryland Cases has come to this warren

account a few years back, and there was a problem developing with the payment! From that pressure, But the petitioner would not fight that fight at that time

(G) The petitioner now must fight this fight because of the SunTrust, the petitioner went to the warren publishing accounting office, which for all these years it was known, this was the respondent's weak contract! (The evidence is in these) Record In good faith!

(H) The petitioners told the accountant officer all of this, and more, the account officer contacted SunTrust, SunTrust wanted him to talk to their legal service, then SunTrust made a request for the accountant officer, office to dispose of the problem, and me/ the petitioner The accountant said " No he had been here longer than I have, over 20 years."

(I) with in a few days later, this president of Warren Publishing, Paul Warren, canceled their contract they said "I was complaint sick, for Taking this constitutional action, and he did not want the complications/ complaint, the impact of this $1,500 a month lost was to stop all appeals funds ability to legally resolve this bad faith fraud foreclosure. "Point" I place in the president Paul Warren hand in writing with the copies of the evidence, and this here in, and more in written and I signed it. Paul Warren did just, what the Maryland Court did, he, would not dispute the evidence well documented but he would not acknowledge there existents! And the raises of law, honesty, constitutional justice, to be denied, just keep it from the people's JUSTICE, this way scare the American people to death, if the Supreme Court with the constitutional authority of a life time can't, and want stop, and correct this bad faith harmful fraud foreclosure, on this admission evidence, then all of the people's constitutional protection is lost forever. The bank and it's supporters by this back door unconstitutional scam have a legal/ or illegal right to steal any person home/ property, and the Maryland court, the right of search and seizure of any property, on an insufficient, illegal evidence, and the constitutional Law of the Land be

dammed. This is the people very loud cry for help and make the innocent petitioner, guilty of the admission party guilty response to the crime, which is just short of a legal confession. To impact review (Case Law) #1, #2, #3, #4 · Admission to sufficient facts. Also called "submission to a finding", means an admission to fact sufficient to warrant a finding of guilty. Com v. Duquette, 386 Mass. 834, 438 N.E.2d 334, 338. This unconstitutional process, to evade a fair trial by jury! This price is to high, to the American peoples to sustain by compelling court err on admission evidence this harmful fraud foreclosure. nightmare· forever

CONCLUSION

The petitioner, and American people pray, the Supreme Court granting these reasons of granting this review, to protect the public, from this bad faith, fraud, harmful foreclosure, nightmare injustice forever, sustain by court err Only! No Court should be able to use this kind of err which clearly lie, with the petitioner being without counsel, and not, by choice, but due to extreme duress, and the respondent applying outside pressure, is unconstitutional factors, that clearly, by the respondents admission, sufficient evidence for a finding of respondents as guilty, in both cases, did have an advised affect on this case before all courts, and the Maryland Court abandoning, of the petitioners right to be properly heard, and all courts interest lie, in the constitution due process, and administration of justice from this legal process, no one is above the law, so no one will ever attempt this bad faith, fraud of harmful foreclosure, and fraud on this court, ever again! It is very clear the respondents had set up the petitioner, up to fail, on appeal process, this way the respondent can say to the American people fear, it was the petitioners who did not meet the requirement of constitutional Law! The petitioner request the Supreme Court grant this writ for public protection and punitive damages as per the petitioners complain/ evidence denied by all courts!

(Pro Se) petitioner Respectfully Submitted

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1351

September Term, 2002

WILLIAM SMITH

v.

BANK AMERICA MORTGAGE, FBS

Murphy, C.J.,
Sonner,
Smith, Marvin H.,
(Retired, Specially Assigned)

JJ.

Opinion by Smith, J.

Filed: June 24,2003

(Appendix A)

For the second time, William Smith, the appellant, asks this Court to resolve issues concerning the foreclosure sale of his home. For the second time, we shall affirm the judgment of the trial court.

Before addressing the merits of Smith's appeal, we observed that, despite the serious consequences attached to foreclosure, Smith has never obtained the services of an attorney. He represented himself throughout the original foreclosure proceeding and continues to represent himself in this proceeding. Smith's decision to proceed (Pro Se) was an unfortunate one. Legal procedure can be perplexing, even for the most seasoned attorney. Ignorance of procedure can prove lethal to the case of a novice such as Smith. In Smith's case, it has foreclosed his opportunity to attempt to prove that the sale was the result of fraud.

FACTS

In 1986, Smith executed a promissory note for $94,300.00 in favor of Guardian Mortgage Investment Corporation. The note was secure by a deed of trust on Smith's residence. It contained an acceleration clause which provided that the entire debt would become due if Smith defaulted on any one payment. A power of sale that could be exercised in the event was granted to named trustees.

Guardian eventually assigned the noted to Bank America Mortgage, FBS (the bank), and the appellee. In 1997, the bank determined that Smith had filed to make payments due under the note. It appointed substitute trustees in place of the trustees name in the note.

See Md. Code (1974, 1996 Repl. Vol., 2002 Cum. Supp.) 7-105 (a) of the Real Prop. Art.

The substitute trustee then instituted a foreclosure action in the Circuit Court for Prince George's County. The action proceeded with the substitute trustees as plaintiffs, and a foreclosure sale was conducted on July 22, 1998. The bank purchased the property for $110,835.00. The sale was ratified on November 9, 1998, and no expectations were filed.

The matter was then referred to a court auditor, who issued a report on April 15, 1999. The report stated that the net proceeds of the sale were "insufficient to pay the secured debt and accrued interest, resulting in a deficiency" of $1,158.34. Smith promptly filed expectations to the auditor's report.

On July 21, 1999, before any action was taken on Smith's expectations to the auditor's report, Smith al so filed suit against the bank. He alleged, in essence, that he had timely made the payments due under the promissory note but that the bank, through its employees, had altered his checks and otherwise fraudulently represented that he had not. Smith did not seek to void the foreclosure sale but, instead, requested monetary damages in the amount of $1, 500, 000.00. It's is suit that is the subject of this appeal.

In September of 1999, the court held a hearing on Smith's exceptions to the auditor's report. No action had yet been taken in connection with Smith's suit against the bank, Smith attacked the foreclosure sale itself, claiming it was the result of fraud on the part of the bank. The substitute trustees, who defended against the expectations, pointed out the expectations were to the auditor's report and not to the foreclosure sale.

See generally code) 1974, 1996 Repl. Von., 2002 Cum. Supp.) 7-105 of the Real Prop. Art); Md. Rules Title 14, Chapters 200 and 300 (setting forth procedure for foreclosure actions and judicial sales).

In response, Smith contended that the "audit was based on fraud, deception, irregularity, and mistakes." The court overruled the expectations and issued an order ratifying and confirming the auditor's report.

Smith then filed his first appeal to this Court. We treated the appeal as one form the trial court's refusal to set aside its earlier ratification of the foreclosure sale under Md. Rule 2-535 (b), on the ground of fraud, mistake, or irregularity. We affirmed the trial court's decision and explained that Smith "failed to present [to the trial court] any credible evidence of fraud, mistake, or irregularity, as contemplated by rule 2-535, that would warrant vacating the enrolled judgment [] ratifying the foreclosure sale of Smith's property. We explained that to establish fraud under the rule, the moving party must show (Extrinsic Fraud) fraud that prevents the actual despite from being submitted to the fact finder at all. We determined that Smith's allegations of altered checks and related fraudulent conduct amounted to allegations of (Intrinsic Fraud). We explained: "Because the claim of altered checks goes to the very heart of the question of whether appellees (the substitute trustees) had a right to foreclose on appellant's property in the first place, it should have been litigated when the foreclosure action was first filed."

Meanwhile, in the suit brought by Smith against the bank, the bank filed a motion to dismiss or for summary judgment. A hearing on the motion was held on July 26, 2002. The bank argued that the issues raised by Smith in his complaint should have been raised when the foreclosure sale was ratified. The Trial court agreed and asked Smith to explain "What is different....."

Smith. Friedman, No. 1832, September Term, 1999, Court of Special Appeals Slip op. at 9 (Filed March 29, 2001) (Unreported).

In response, Smith stated that his argument was "jurisdictional", and pointed out that "jurisdiction can be raised at any time" Presumably, Smith was calling into question the court's subject matter jurisdiction. Smith did not specify, however, precisely when the court lacked jurisdiction.

The court rejected Smith's argument and concluded that the matter "should have been resolved by expectations" to the ratification of the sale. It issued a brief order, by which it:

> ORDERED that Defendant, Bank America Mortgage, FSB's Motion to Dismiss and/ or for Summary Judgment is granted, and it is hereby
>
> ORDERED, that Plaintiff's Complaint is dismissed with prejudice.

Smith has appealed to this Court from the trial court's decision. His arguments on appeal are, for the most part, unintelligible. Throughout most of his brief, Smith attacks the foreclosure sale itself on the ground that it was brought about by fraudulent conduct on the part of the bank's employees. Smith also contends in his brief, as he did in the trial court, that his arguments somehow relate to jurisdiction and, therefore, are not precluded. Again, Smith had filed to prove a coherent explanation for this argument, and we shall not address it.

DISCUSSION

Although the trial court purported to grant both the motion to dismiss and the alternative motion for summary judgment, we shall focus our review on the summary judgment. A motion to dismiss stands or falls on the pleading alone. See Green v. H&R Block, Inc., 355 Md. 488, 501 (1999).

Id. At 8 (citation omitted)

If matters outside the pleadings are considered, the motion must be treated as one for summary judgment. See Md. Rule 2-322 (c); Green, 355 Md. At 501- 02. It is apparent that, in granting the bank's motion and entering judgment in favor of the bank, the trial court considered matters outside the pleadings. The court necessarily considered the banks documentation that (1) the foreclosure took place and was ratified, (2) Smith did not file expectations to the ratification, (3) Smith did file expectations to the subsequent auditor's report, at which time he contended that the sale had been brought about by fraud on the part of the bank's employees, (4) The trial court overruled Smith's expectations, and (5) upon Smith's appeal, This Court determined that what had occurred in the trail court was equivalent to a motion to set aside the foreclosure sale based on fraud, mistake, or irregularity, but that Smith had failed to present to the trial court any credible evidence in support of his motion. See e.g., Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship, 338 Md. 1, 9-10 (1995) (where plaintiff mortgagor sued defendant mortgage after foreclosure sale was ratified, and trial court dismissed complaint for failure to state a claim in light of principles of res judicata, legal effect of court's ruling was to grant summary judgment in defendant's favor).

"In determining whether summary judgment was properly granted, we examine whether the trial court was legally correct taking the facts in the light most favorable to the losing party". Green, 355 Md. at 502. "Our review is de novo since we have the same information from the record and decide [] the same issues of law as the trail court' Id. (citation omitted).

The bank argues on appeal that the trial court's decision, that the matter "should have been resolved by expectations" to the ratification of the sale, was properly based on either the doctrine of res judicata or the doctrine of collateral estoppels. "Both are branches of a doctrine known as estoppel is what its name says it is. Klein v. Whitehead, 40

Md. App. 1, 13 (1978). "The functions of [the two doctrines] are to avoid the expense and vexation of multiple lawsuits, converse judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions. Colandrea v. Wilde Lake Cmty. Assoc., Inc., 361 Md. 371,387 (2000). They are "based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered..." Id. at 391. As the Court of Appeals has "repeatedly recognized," however, "there is a distinction between the principles of res judicata and collateral estoppel Id. at 387.

The requirements of res judicata are:

> 1) That the parties in the present litigation should be the same or in privities with the parties to the earlier dispute; 2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and 3) that there was a final judgment on the merits.

Id. at 392. Collateral estoppel, on the other hand, applies if the following four part test is satisfied:

1) Was the issue decided in the prior adjudication identical with the one presented in the action in question?
2) Was there a final judgment on the merits?
3) Was the party against whom the plea is asserted a party or in privities with a party to the prior adjudication
4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Id. at 391 (citation omitted)

Thus " [c] collateral estoppel is concerned with the issue implications of the earlier litigation of a different case, while res judicata is concerned with the legal consequences of a judgment entered earlier in the same case" Id. at 390-91 (emphasis added). The doctrine of res judicata establishes that "a judgment between the same parties or their privies

upon the same cause of action is conclusive 'not only as to all matters which with propriety could have been litigated in the first suit.' Id. at 492 (citation omitted).

(Citation omitted). "If, however, we are not dealing with the same cause of action, collateral estoppel rather than res judicata would apply and only those determinations of fact or issues actually litigated in the first case are conclusive in this action" MPC, Inc. v. Kenny, 279 Md. 29, 33 (1977)

In the case sub judice, the issue of whether the bank altered Smith's checks and other wise fraudulently represented that Smith had defaulted on the promissory note was never decided in the trial court. Smith raised the issue for the first time in his exceptions to the auditor's report, when he made the equivalent of a motion to set aside the foreclosure sale based on fraud. The trail court denied the exceptions and this Court affirmed, explaining that Smith alleged only (Intrinsic Fraud) and not the type of (Extrinsic Fraud) necessary to set aside an enrolled judgment under Md. rule 2-535 (b).

The trial court made no ruling as to the alleged (Intrinsic Fraud) and, indeed, this court made clear that such allegations were not properly before the trial court at the hearing on the exceptions to the auditor's report. The doctrine of collateral estoppel is clearly inapplicable. We therefore focus our analysis on whether Smith's complaint was barred by principles of res judicata.

As to the first factor required to establish res. Judicata, see Colandrea, 361 Md. at 392, we are satisfied that the parties in the foreclosure action. The substitute trustees initiated the foreclosure action by filing an order to docket. In the order to docket, the substitute trustees asserted that the bank had substituted then for the original trustees, Under Maryland Law.

(a) "Provision may be inserted in a mortgage or deed of trust authorizing any natural person named in the instrument, including the secured party, to sell property" upon default of the debtor. Code (1974, 1996 Repl. Vol., 2002 Cum.

Supp.) 7-105 (a) of the Real Prop. Art. (Emphasis added). See also Md. Rule 14-204 (a). Clearly, the substitute trustees were the agents of the bank in the foreclosure action.

As a general rule, an agent who performs an act on behalf of a principal is in privities with the principle as to that action. See Deleon v. Slear, 328 Md. 569, 581-88 (1992) (in defamation action, employee nurses were in privities with employer hospital and plaintiff could not bring action against nurses after unsuccessfully prosecuting action against hospital). "The term 'parties'.... Is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, direct, or defend it", and has the right to control, direct, or defend it" McKinzie v. Baltimore and Ohio R.R. Co., 28 Md. 161, 174 (1868). See, E.g. Fairfax Sav., F.S.B., 338 Md. at 5, 31 (where a mortgage was foreclosed by substitute trustees but res judicata barred a subsequent action by the mortgagor against the mortgagee).

In regard to the second requirement for application of the doctrine of res judicata, we are convinced that Smith's fraud allegations against the bank could and should have been raised and litigated in the foreclosure action. See Colandrea, 361 Md. at 392.

The Court of Appeals has "adopted the transaction test of 24 of the restatement (Second) of judgments as the basic test for determining when two claims or causes of action are the same for purposes of res judicata." Gertz v. Anne Arundel County, 339 Md. 261, 269 (1995).

What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving such weight to such considerations as whether the facts are related in time, space, orgin, or motivation, whether they form a convenient trial unit confirms to the parties expectations or business understanding or usage.

Kent County Bd. Off Educ. V. Bilbrough, 309 Md. 487, 498 (1987). Ordinarily, in light of this State's permissive counterclaim rule, see Md. Rule 2-331, "where the same facts maybe asserted as either a defense or a counterclaim, and the issue raised by the defense is not litigated and determined so as to be precluded by collateral estoppel, the defendant in the previous action is not barred by res judicata from subsequently maintaining an action on the counterclaim." Rowland v. Harrision, 320 Md. 223,235-36 (1990) (footnotes omitted). Res judicata will bar the subsequent action, however, if the facts constituting the defense or counterclaim are "such that [the] successful prosecution [of the action] would nullify the [prior] judgment' Id. at 236 (citing Restatement (second) of judgments 22(b) (2) (1982)).

In Fairfax Sav., F.B.S., 338 Md.1, A mortgagor filed a tort suit, seeking monetary damages, against a mortgagor's property. One basis of the tort claims was that the mortgagor had not defaulted on the mortgage. The mortgagor, however, had dismissed its expectations to the ratification of the sale and the question of default had not been litigated below. The Court of Appeals determined that the tort suit was barred by res judicata. The court explained:

(A) Foreclosure – triggering default is a condition precedent to a Maryland mortgage foreclosure... Ordinarily, the exisistance of that essential will be demonstrated by the statement of mortgage debt and by the mortgage that is required to accompany the order to docket the summary proceedings.....Allegations that there was no foreclosure triggering default negate, contradict, and in that sense nullify an essential foundation for the foreclosure judgment. Those allegations were precluded by the foreclosure judgment, and the circuit court correctly culled that they should be culled from Plaintiff's.....

Id. at 31 (citations omitted). Cf. Bachrach v. Washington United Coop., Inc. 181 Md. 315, 320 (1943) ("the law is firmly established in Maryland that the final ratification of the sale of property in foreclosure proceedings is res judicata

as to the validity of such sale, except in case of (Extrinsic Fraud) or illegality, and hence it's regularity cannot be attacked in collateral proceedings")

There can be no dispute that there was a final judgment on the merits in the foreclosure action. Thus, Smith's complaint against the bank is barred by the doctrine of res judicata

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COST.

WILLIAM SMITH,	IN THE
Plaintiff,	CIRCUIT COURT
v.	FOR
BANK AMERICA MORTGAGE, FSB,	PRINCE GEORGE'S COUNTY
Defendant	**CASE NO. CAL 99-15740**

ORDER

Upon consideration of Defendant, Bank America Mortgage, FSB's Motion to dismiss and/ or for Summary Judgment, any opposition thereto, and for good cause shown, it is the 26 day of July, 2002 by the Circuit Court for Prince George's Country, Maryland, hereby.

ORDERED that defendant, Bank America Mortgage, FSB's Motion to Dismiss and/ or for Summary Judgment is granted, and it is hereby

ORDERD, that Plaintiffs Complaint is dismissed with prejudice

/s/ James J. Lombardi
Judge,
Circuit Court for Prince George's County

True Copy Test

/s/ _____
Clerk

ENTERED 7-30-02

(Appendix B)

WILLIAM SMITH

v.

BANK OF AMERICA MORTGAGE, FSB

IN THE

COURT OF APPEALS

OF MARYLAND

Petition Docket No. 280
September Term, 2003

(No. 1351 Sept. Term, 2002, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the supplement files thereto, in the above entitled case, it is

ORDERD, by the Court of Appeals of Maryland, that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest

/S/ Robert M. Bell
Chief Judge

Date: September 17, 2003

STATE OF MARYLAND, COURT OF PRINCE GEORGE'S to wit:

I hereby certify, that on this 17th day of March, 1986, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Prince George's, aforesaid, personally appeared Willaim Smith and he acknowledged the forgoing deed to be his act.
In witness whereof, I have hereunto set my hanf and affixed my official seal the day and year asforesaid

/s/ Lillian C. Repeher, Notary Public

My commission expires 7/1/86
REMIT TO:
Guardian Martgage and Investment Corporation
6575 Edsall Road
Springfield, Md 22151

I HEREBY CERTIFY that I am admitted to Practice before the Court of Appeals of the State of Maryland and this instrument was Prepared under my supervision.

/s/ Byron L. Huffman

Facsimile of State of Maryland Deed of Trust

/s/ William Smith

(Old Supreme Court **Appendix E (E-7)** case 01-391)

Facsimile Letterhead Bank America, Mort. Holder

October 10, 1996

William Smith
11604 Kimberly Woods
Ft. Washington MD 20744

RE: Loan No. 0003853769
Check for $1200.00

We are returning your recent payment because it is not sufficient to bring your loan current. The delinquency constitutes a default under the terms of you mortgage and we must receive $2653.91 in order to reinstate your loan.

If you have any questions, please call one of our Costomer Service Representatives.

Default Management

Toll Free Number 1-800-552-7992
Richmond 804-762-5300

PP002 006 PGE

3-407 Alteration Ck. 3890

Prof. Prog. Cleaning Service
William Smith
11604 Kimberly Woods Ln.
Facsimile of Citizens Bank Check No. 3890, marked with Bank America "02/T" altered date of "Sept. 31, 96, and to Bank America FSB $1200.00, indication (Sept. 31, 96) #000385376-9 and signed by William Smith

(Appendix E)

Facsimile Letterhead
Law Office of Friedman & Mac Fadyen, P.A

April 12, 2002

William K. Suter, Clerk
Supreme Court of the Untied States
Office of the Clerk
Washington, D.C. 20543

RE: William Smith v. Alvin E. Friedman, et al.
Case No: 011391

Dear Mr. Suter:

Enclosed please find a Waiver to be filed in his above referenced matter.

Very truly yours,

FRIEDMAN & Macfadyen, P.A

/S/

Kenneth J. Mac Fadyen

KJM/np
Enclosure

(Appendix F)

WAIVER

Supreme Court of the United States

Supreme Court Case No. 01-1391

William Smith v Friedman & MacFadyen P.A.
I DO NOT INTENT TO FILE A RESPONSE to the petition for writ of certiorari unless one is requested by the Court.
Please check one of the following boxes:
() Please enter my appearance as Counsel of Record for all respondents
()There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondents: Kenneth J Macfadyen
I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission:

/S/_____
Date: 4-12-02

(Type or print) Name: Kenneth J. MacFadyen
Firm: Friedman & MacFadyen, P.A.
Address: 210 E. Redwood Street, Suite 400
City: Baltimore, MD Zip: 21202
Phone: (410) 685-1763 ext. 131
A COPY OF THIS FORM MUST BE SENT TO PETITTIONERS COUNSEL OR TO PETITIONER IF Pro Se. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATION OF SERVICE IS REQUIRED.
SEE RESERVE FOR INFORMATION CONCERNING THE STATUS OF A CASE ON THE DOCKET.
CC:

Mr. William Smith, c/o Mary Moore
1123 Congress Street, S.E.
Washington, D.C. 20032

WILLIAM SMITH	IN THE
Plaintiff,	CIRCUIT COURT
v.	FOR
BANK AMERICA MORTGAGE, FSB	PRINCE GEORGE'S COUNTY
Defendant,	Case No. CAL 99-15740

ANSWER OF DEFENDANT, BANK AMERICA MORTGAGE, LLC

Defendant, Bank America Mortgage, LLC (the "Bank"), by it's undersigned attorneys and pursuant to Maryland Rule 22-323, hereby file this Answer in response to Plaintiff's Complaint (the "Complaint"), and states as follows.

RESPONSES TO SPECIFIC ALLEGATIONS

1. The allegations contained in paragraph A of the Complaint are not directed to the Bank; however, to the extent that they are direction at the Bank, the Bank denies same.
2. The allegations contained in paragraph B of the Complaint are not directed to the Bank; however, to the extent that they directed at the Bank, the Bank denies same
3. The allegations contained in paragraph C of the Complaint are not directed to the Bank; however, to the extent that they are directed at the Bank, the Bank denies same
4. The allegations contained in paragraph D of the Complaint are not directed to the Bank; however, to the

extent that they are directed at the Bank, the Bank denies same.

5. The Bank lacks sufficient information to response to the allegations contained in paragraph E of the Complaint, and , therefore, denies the same
6. The Bank denies all allegations and statements contained in paragraph F of the Complaint
30. The Bank denies all allegations and statements contained In paragraph 18 of the Complaint.
31. The Bank denies all allegations and statements contained In paragraph 19 of the Complaint
32. The Banks denies all allegations and statements contained In paragraph 20 of the Complaint
33. The Bank denies all allegations and statements contained in paragraph 21 of the complaint
34. The Bank denies that plaintiffs are entitled to any relief requested in paragraph M of the Complaint as such request is improper in complaint.

GENERAL DENIAL

The Bank generally denies liability and generally denies all of the allegations contained in the complaint, pursuant to Maryland Rule 2-323 (d).

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a claim against the Bank upon which relief can be granted.

Second Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel

Third Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

Fourth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by ratification

Fifth Affirmative Defense

Plaintiff's claim against the Bank are Barred, in whole or in part, by the applicable statue of limitations

Sixth Affirmative Defense

Plaintiff's claim against the Bank are barred, in whole or in part, by the doctrine of laches

Seventh Affirmative Defense

The Bank hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus, reserves the right to amend its Answer to assert such defenses.

WHEREFORE, as to its Answer, Defendant Bank America Mortgage, LLC, respectfully requests that this Court dismiss Plaintiff's Complaint, that judgment be entered in favor of Bank America Mortgage, LLC, and that the Court award such other and further relief as it believes justice may require.

Respectfully submitted,
/S/_____

Tessa Laspia Frederick
Miles& Stockbridge P.C
10 Light Street
Baltimore, Maryland
(410) 727-6464

Attorney for Bank America
Mortgage LLC

WILLIAM SMITH,	IN THE
Plaintiff,	CIRCUIT COURT
v.	FOR
BANKAMERICA MORT,FSB	PRINCE GEOR-GE'S COUNTY
Defendant	**Case No. CAL 99-15740**

MEMORANDUN IN SUPPORT OF DEFENDANT BANK AMERICA MORTGAGE, FSB'S MOTION TO DISMISS AND/ OR FOR SUMMARY JUDGMENT

Defendant, Bank America Mortgage, FSB (the "Bank"), by it's undersigned attorneys, pursuant to Maryland Rules 2-322 and 2-501, submits this Memorandum in Support of the Bank's Motion to Dismiss and/ or for Summary Judgment, and states as follows.

INTRODUCTION

This action arises from the foreclosure sale of certain real property owned by Plaintiff, William Smith ("Plaintiff"), located at 11604 Kimberly Wood Lane, Fort. Washington, Maryland (the "Property"). The Bank was the mortgagor on the Property. Plaintiff's Complaint, although nearly unintelligible, appears to allege that, among other things, the Bank made false statements and committed fraud and forgery in connection with the mortgage and subsequent foreclosure on the Property.

Plaintiff is barred by res judicata and/ or collateral estoppel from bringing this action and/ or raising the claims

made in his Complaint because Plaintiff had a full and fair opportunity to raise such claims in the prior foreclosure proceeding on the Property, which resulted in a final judgment. However, even if Plaintiff could prove that this action is not barred by res judicata and/ or collateral estoppel, the Complaint completely fails to set forth any facts sufficient to state a claim against the Bank. Therefore, the Complaint should be dismissed with prejudice. Lynch, Jr. & Richard W. Bourne, Modern Maryland Civil Procedure 6.1 (1993). Because Plaintiff's free-roaming Complaint fails properly to notify the Bank of the claims against it, fails to state the facts upon which Plaintiff relies, creates unnecessary confusion, and repeats claims already litigated before this Court and elsewhere, it must be dismissed with prejudice.

CONCLUSON

For all the forgoing reasons, Defendant, BankAmerica Mortgage, FSB, respectfully request that this Court grant it's Motion to Dismiss and/ or for Summary Judgment.

Respectfully Submitted,

/S/_____

Tessa Laspia Frederick
Sean P. Vitrano
Miles & Stockbridge P.C.
10 Light Street
Baltimore, Maryland 21202
(410) 727-6464

Attorneys for Bank America Mort. FSB

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of April 2002, a copy of the forgoing ***Memorandum in Support of defendant, Bank America Mortgage, FSB's Motion to Dismiss and/ or for Summary Judgment*** was mailed, first class postage prepaid to:

William Smith
1123 Congress Street, S.E.
Washingtion, D.C. 20032

/s/_____
Tessa Laspia Fredrick

(Appendix I - B)

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATE
WASHINGTON, D.C. 20543

II. Nature of Supreme Court Review

It is important to note that review in this Court by means of a writ of certiorari is not a matter of right, but of judicial discretion. The primary concern of the Supreme Court is not to correct errs in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved. The Court grants and hears argument in only about 1% of the cases that are filed each term. The vast majority of petitions are simply denied by the Court without comment or explanation. The denial of a petition for a writ of certiorari signifies only that the Court has chosen not to accept the case for review and does not express the Court's view of the merits of the case.

Every petitioner for a writ of certiorari is advised to read carefully the Considerations Governing Review on Certiorari set forth in rule 10. Important considerations for accepting a case for review include the existence of a conflict between the decision of which review is sought and a decision of another appellate court on the same issue. An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. Another consideration is the importance to the public of the issue.